

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
(916) 274-5721
FAX (916) 274-5743
www.dir.ca.gov/oshsb



Attachment No. 2

INITIAL STATEMENT OF REASONS**CALIFORNIA CODE OF REGULATIONS**

**TITLE 8: Chapter 4, Subchapter 7, Article 25, Sections 3649 and 3651(a)
of the General Industry Safety Orders**

Low Profile Tractors**SUMMARY**

This rulemaking action is the result of two separate memorandums to the Occupational Safety and Health Standards Board (Board) from the Division of Occupational Safety and Health (Division), and attached Request for New, Or Change In Existing Safety Orders. The memorandum dated April 21, 2003, requests an amendment to the low profile tractor definition in General Industry Safety Order (GISO) section 3649, and the other, dated May 1, 2003, pertains to GISO section 3651, agricultural and industrial tractors, specifically to amend subsection (a) for clarity through the elimination of duplicative language.

The Division stated that a technical, clarifying revision to section 3649 is necessary to indicate to the employer that all of the low profile tractor characteristics specified in the existing standard must be present to be classified as a low profile agricultural tractor. Three of the determining characteristics spelled out in the existing section 3649, low profile tractor definitions, are based on national consensus standard language as specified in part by the American Society of Agricultural Engineers (ASAE) S390.3 JUN01 standard. In reading the ASAE industry-based standard, it is clear to both the Division and Board staff that a low profile tractor is defined by possessing more than one defining characteristic. The existing Title 8, section 3649 definition is not clear as to whether a tractor must possess all four characteristics specified in paragraphs A-D in order to be called a low profile tractor. The proposal would improve clarity by specifying that all four (emphasis added) characteristics must be present in order to confirm the identity of a tractor as being a low profile tractor.

The Division is also proposing amendments to section 3651(a) to reorganize the regulatory text to eliminate duplication in the exception statements by deleting exception No. 1 and combining it with the existing exception No. 2. Board staff and Division agree that this proposed amendment would result in exceptions to the required rollover protective structures (ROPS) use that are clearer and more concise.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

Section 3649. Definitions.

This section contains various definitions of terminology used in the regulatory text of Article 25 as they pertain to industrial trucks, tractors, haulage vehicles and earthmoving equipment, specifically definitions for terms such as but not limited to: agricultural tractor, ASAE, high-lift truck, low profile tractor, etc.

A revision is proposed to the definition for Low Profile Tractor to make it clear that the tractor must possess all four determining characteristics in paragraphs A-D pertaining to clearance, front wheel spacing, etc.

The proposed amendment is necessary to clarify to the employer that for any tractor to be classified as a “low profile tractor” it must possess all four existing design/functional characteristics specified in the definition.

Section 3651. Agricultural and Industrial Tractors.

This section contains standards pertaining to the use of ROPS on agricultural and industrial tractors and includes exceptions for low profile tractors when they are used in certain situations where the use of ROPS would be infeasible. Additionally, this section contains specifications for the design and installation of ROPS in accordance with specified national consensus standards, ROPS labeling and identification, design of the operator’s station, design of battery, fuel tanks, coolant systems, etc.

A revision is proposed for subsection (a) to delete (a)(1) and amend existing (a)(2) to include language from (a)(1) pertaining to orchards, vineyards and hop yards. Further editorial revisions are proposed to renumber the paragraphs in subsection (a) consistent with existing Title 8 format and to delete the word, “which” in existing (a)(2) for replacement by the grammatically correct word “that.”

The proposed revision is necessary to eliminate duplicative language in the existing regulatory text contained in subsection (a)(1), thereby rendering subsection (a) clearer and more understandable to the employer with regard to when ROPS are not required on low profile tractors.

DOCUMENTS RELIED UPON

1. Memorandum from the Division of Occupational Safety and Health to the Occupational Safety and Health Standards Board dated April 21, 2003, with attached Request for New, or Change in Existing, Safety Order for section 3649, Low Profile Tractor Definition.
2. Memorandum from the Division of Occupational Safety and Health to the Occupational Safety and Health Standards Board dated May 1, 2003, with attached Request for New, or Change in Existing, Safety Order for section 3651(a), Agricultural Tractor ROPS Exceptions.

3. American Society of Agricultural Engineers S390.3 JUN01.

These documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC
IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standards do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these standards do not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

These proposed standards do not require local agencies to carry out the governmental function of providing services to the public. Rather, the standards require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed standards do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

These proposed standards do not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to these standards will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which

the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.